

## FLOOD HAZARD AREAS

### 58:16A-50. Short title; declaration of policy

a. This act shall be known and may be cited as the "Flood Hazard Area Control Act."

b. It is in the interest of the safety, health, and general welfare of the people of the State that legislative action be taken to empower the Department of Environmental Protection<sup>1</sup> to delineate and mark flood hazard areas, to authorize the Department of Environmental Protection to adopt land use regulations for the flood hazard area, to control stream encroachments, to coordinate effectively the development, dissemination, and use of information on floods and flood damages that may be available, to authorize the delegation of certain administrative and enforcement functions to county governing bodies and to integrate the flood control activities of the municipal, county, State and Federal Governments.

### 58:16A-51. Definitions

As used in this act, unless the context indicates another or different meaning or intent:

(a) "Channel" means a watercourse with definite bed and banks which confine and conduct continuously or intermittently flowing water;

(b) "Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any natural stream;

(c) "Flood hazard area" means the floodway and the flood fringe area as determined by the department under section 3 hereof;

(d) "Relative risk" means the varying degrees of hazard to life and property in a flood hazard area which are occasioned by differences in depth and velocity of flood waters covering and flowing over it;

(e) "Flood fringe area" means that portion of the flood hazard area not delineated as the floodway;

(f) "Department" means the Department of Environmental Protection.

(g) "Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

### 58:16A-52. Delineation of flood hazard areas

a. The department shall study the nature and extent of the areas affected by flooding in the State. After public hearing upon notice, and pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), the department shall adopt rules and regulations which delineate as flood hazard areas such areas as, in the judgment of the department, the improper development and use of which would constitute a threat to the safety, health, and general welfare from flooding. Such delineations shall identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams. The

department may, after public hearing upon notice and pursuant to the aforecited "Administrative Procedure Act," revoke, amend, alter, or modify such regulations if in its judgment the public interest so warrants.

b. The department shall wherever practicable, make floodway delineations identical to the floodway delineations approved by the Federal Government for the National Flood Insurance Program.

c. The department shall establish a procedure for reducing any delineated flood hazard area when a change has been made which increases the flood carrying capacity of the concerned stream at that location.

#### 58:16A-53. Markers

The department may conspicuously mark in the field (1) any flood hazard area delineated by the department, and (2) any other area the department may deem necessary to effectuate the purposes of this act. The department may erect markers on any property belonging to the State, or any agency or instrumentality thereof. Such markers may be erected on any county, municipal, or private property provided that such county, municipality, or owner shall have consented thereto. No person may remove, deface or otherwise disturb any marker erected under the provisions of this act.

#### 58:16A-54. [Repealed]

#### 58:16A-55. Land in designated floodway; rules, regulations and orders concerning development and use; waiver

(a) The department is authorized to adopt, amend and repeal rules and regulations and to issue orders concerning the development and use of land in any delineated floodway which shall be designed to preserve its flood carrying capacity and to minimize the threat to the public safety, health and general welfare. Such rules and regulations or orders may require the approval of the department for specified changes in the use of land within any such floodway.

(b) Provision shall be made by the department for the waiver, according to definite criteria, of strict compliance with the rules and regulations, where necessary to alleviate hardship.

#### 58:16A-55.1. Repair or rebuilding of lawful preexisting structure within flood hazard area

No rule or regulation adopted pursuant to section 4 or 7 of P.L. 1972, c. 185 (C. 58:16A-55 or 58) shall prevent the repair or rebuilding within a flood hazard area of any lawful preexisting structure which was damaged by a flood or by any other means.

#### 58:16A-55.2. Structure or alteration within area subject to inundation by 100 year design flood of nondelineated stream; approval; conditions

a. No structure or alteration within the area which would be inundated by the 100 year design flood of any nondelineated stream shall be made, rebuilt or renewed by any person without the approval of the department and without complying with such conditions as the department may prescribe for preserving such area and providing for the flow of water therein to safeguard the public against danger from the waters impounded or affected by such structure or alteration. No such approval by the

department shall impair or affect any property rights otherwise existing which might be invaded by the construction or maintenance of any such structure or alteration.

b. The department is authorized, pursuant to the "Administrative Procedure Act" P.L. 1968, c. 410 (C. 52:14B-1 et seq.), to adopt, amend or repeal rules and regulations and to issue orders concerning the making, rebuilding or renewing of any structure or alteration and the development or use of land in the area which would be inundated by the 100 year design flood of any nondelineated stream, which rules and regulations shall be designed to preserve the flood carrying capacity of the stream to minimize the threat to the public safety, health and general welfare. Such rules and regulations shall include a provision which exempts, according to definite criteria, certain minor structures or alterations of a specific size or type from the provisions of subsection a. of this section.

58:16A-55.3. Application for development under Municipal Land Use Law; approval by department

No application for development as defined in the "Municipal Land Use Law," P.L. 1975, c. 291 (C. 40:55D-1 et seq.), for a structure within the area which would be inundated by the 100 year design flood of any nondelineated stream or for a change in land use within a delineated floodway or any State-administered and delineated flood fringe area when such change would require departmental approval, may be granted by any municipality to any person without application to and approval by the department as required pursuant to this act.

58:16A-55.4. County stormwater control and drainage plans; utilization on determinations of approval

Any county governing body may prepare a stormwater control and drainage plan for the county. Such plans shall be prepared after consultation and discussion with the Department of Environmental Protection and with adjacent counties and shall consider and evaluate the impact of any developments within the county or upstream from the county on the streams within the county and downstream from the county. Such plans may be financed in part from the "Emergency Flood Control Bond Act" (P.L. 1978, c. 78). County stormwater control and drainage plans prepared as herein provided shall be utilized by the department in deciding to approve or disapprove any application submitted pursuant to this act.

58:16A-55.5. County water resources associations

Any county governing body may by ordinance or resolution as appropriate, create a county water resources association which may include the chief administrative officer of any county planning agency, county engineers office, county utilities authority, county health department, county mosquito commission, county soil conservation district, or county parks agency and any other public or private members. The county water resources association shall advise the county governing body, shall coordinate the flood control and water management programs for the county and shall have such powers as the county governing body may delegate to it concerning water management in the ordinance or resolution of creation.

58:16A-55.6. Delegation of power to approve or disapprove application to county governing body

The Department of Environmental Protection may delegate its power to approve or disapprove any application made to it pursuant to this act and its power to enforce any aspect of this act to a county governing body which agrees to accept such designation and in the department's judgment is capable of utilizing the rules, regulations and standards adopted by the department for the administration of this program. The department shall review this delegation at least biannually and may revoke such delegation for failure to properly administer such delegated powers. The county governing body may charge the same fees promulgated by the commissioner pursuant to P.L. 1975, c. 232 (C. 13:1D-33), when such powers are delegated to it.

58:16A-55.7. [Agricultural dam repair permit exemptions]

The Commissioner of Environmental Protection shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production area designated pursuant to N.J.A.C. 7:50-5.14 in the pinelands area.

58:16A-56. Minimum standards for local rules and regulations

The department shall promulgate minimum standards for the adoption of local rules and regulations concerning the development and use of land in the flood fringe area designed to minimize the threat to the public safety, health and general welfare.

58:16A-57. Rules and regulations by affected municipality or other responsible entity for development and use of land in flood fringe area

Within 12 months after the delineation of any flood hazard area, and at least 12 months after the promulgation of standards by the department, the affected municipality or other responsible entity shall adopt rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department.

58:16A-58. Failure to adopt or enforce local rules and regulations; action by department

If any affected municipality or other responsible entity fails to adopt or fails to enforce rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department within the specified period, thereafter the department may adopt such rules and regulations which shall be applicable to the particular flood fringe area. Such rules and regulations may require application to and approval by the department for such development or use within any such flood fringe area.

58:16A-59. Adoption of rules and regulations by department; requirements

No rule or regulation adopted by the department pursuant to sections four or seven of this act shall become effective until after notice and public hearing before the department as required by the Administrative Procedures Act (C. 52:14-1 et seq.).

58:16A-60. Inapplicability of rules and regulations to lands regulated by Wetlands Act of 1970

Any rules and regulations adopted pursuant to this act shall not apply to the extent that lands affected thereby are regulated pursuant to "the Wetlands Act of 1970" (P.L. 1970, c. 272) (C. 13:9A-1 et seq.).

58:16A-61. Establishment of full value of lands for assessment

Local assessors shall consider the impact of rules or regulations issued pursuant to this act in establishing full value of lands designated as floodways or as flood fringe areas.

58:16A-62. Local rules and regulations more restrictive than state standards; authorization

Any municipal or other entity vested with authority to adopt rules and regulations concerning the development and use of land may adopt requirements more restrictive than those contained in the rules and regulations adopted by the department for the floodway and than those contained in the minimum standards promulgated by the department.

58:16A-63. Violations; penalties; injunctions

(a) Any person who knowingly violates a provision of this act or a rule, regulation or order adopted pursuant to this act shall be subject to a penalty of not more than \$2,500.00 for each offense and any person who otherwise violates a provision of this act shall be subject to a penalty of not more than \$1,500.00 for each offense, both to be collected by the department in a summary proceeding under "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.), and in any court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall have jurisdiction to enforce said penalty enforcement law. If the violation is of a continuing nature each day which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances. All moneys recovered in any such action, together with the costs recovered therein, shall be paid to the Environmental Services Fund.

(b) If any person violates any of the provisions of this act or any rule or regulation promulgated pursuant to the provisions of this act, the department may institute an action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

58:16A-64. Liberal construction

This act shall be liberally construed to effectuate the purpose and intent thereof.

58:16A-65. Effect of act on powers, duties and functions on state department of environmental protection

The powers, duties and functions vested in the State Department of Environmental Protection under the provisions of this act shall not be construed to limit in any manner the functions, powers and duties vested in the State Department of

Environmental Protection under any other provisions of the law.

58:16A-66. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

58:16A-67. Notice of intent to undertake certain stream cleaning activities; contents; certification; penalties for violation of this act

a. The provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or desnag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, a written notice of intent to undertake a project to clean, clear, or desnag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

(1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;

(2) the removal of any material will not extend below the natural stream bed;

(3) the activities will not alter the natural stream banks;

(4) the activities will consist of the removal only of accumulated sediments, debris, and garbage from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material;

(5) every effort will be made to perform work from only one stream bank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and

(6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. For any project that includes sediment removal, in addition to the conditions enumerated in subsection a. of this section, the following conditions must be met:

(1) the applicant shall provide a statement from the engineer that the stream floods and that such flooding results or can result in property damage necessitating the proposed cleaning, clearing, or desnagging;

(2) the stream to be cleaned, cleared, or desnagged is not classified as pinelands waters or category one waters;

(3) the stream bed is 15 feet or less in average width;

(4) the stream corridor to be cleaned, cleared, or desnagged is less than 500 feet in length;

(5) the stream is not in a municipality, as defined by the department, that is known to have federally or State listed threatened or endangered species associated with its wetlands. Regulated activities in these municipalities shall be coordinated with federal agencies;

(6) the applicant shall provide a certification by the engineer that the material to be removed is not beyond the natural stream bed;

(7) the applicant shall submit surface color photographs of the areas of the stream to be cleaned, cleared, or desnagged and of the access points; and

(8) the applicant shall incorporate appropriate timing restrictions as required by the department.

c. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, shall, except as provided otherwise in this subsection, have 15 days to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in this particular case. For a project involving the removal of sediment, the department shall have 60 days prior to the commencement of activities to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in that particular case. If the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, makes such a determination, it shall provide the applicant with the technical reasons therefor. For the purposes of this subsection, if the department's technical reasons therefor are based upon the inability to determine the natural stream bed, the department shall, at the request of the applicant, assist in identifying the natural stream bed. The department may not prohibit the removal of any garbage no matter how long it has been in the

stream, nor shall the department require extensive mapping or other engineering services which involve significant expense to the municipality.

d. Upon completion of the project to clean, clear, or desnag a stream involving the removal of sediment within its jurisdiction, the applicant shall submit to the department a written notice that the project has been completed in accordance with the conditions outlined in subsection b. of this section. The notice shall contain a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that all the conditions in subsection b. of this section have been adhered to.

e. As used in this section:

"Applicant" means a county or municipality, or designated agency thereof;

"Category one waters" means, for the purposes of sediment removal, those waters designated by the Department of Environmental Protection, for purposes of implementing the antidegradation policies of the "Water Pollution Control Act", P.L.1977, c. 74 (C.58:10A-1 et seq.), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. These waters may include, but are not limited to:

(1) Waters originating wholly within federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated by the department as FW1;

(2) Waters classified by the department as FW2 trout production waters and their tributaries;

(3) Surface waters classified by the department as FW2 trout maintenance waters or FW2 nontrout waters that are not more than 750 feet upstream of waters classified by the department as FW2 trout production waters;

(4) Shellfish waters of exceptional resource value; or

(5) Other waters and their tributaries that flow through, or border, federal, State, county or municipal parks, forest, fish and wildlife lands, and other special holdings;

"Department" means the Department of Environmental Protection;

"FW" means the general surface water classification applied to fresh waters;

"FW1" means those fresh waters that originate in and are wholly within federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality and not subjected to any man-made wastewater discharges;

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 or pinelands waters;

"Trout maintenance waters" means waters designated by the department for the support of trout throughout the year; and

"Trout production waters" means waters designated by the department for use by trout for spawning or nursery purposes during their first summer.

f. Any person or governmental entity violating the provisions of this section shall be subject to penalties imposed for violations of the "Flood Hazard Area Control Act," P.L.1962, c. 19 (C.58:16A-50 et seq.).

58:16A-68 to 58:16A-99. [Reserved]

58:16A-100. Flood early warning system

a. The Commissioner of the Department of Environmental Protection shall, in consultation with the United States Army Corps of Engineers and in coordination with the Office of Emergency Management in the Division of State Police, develop a flood early warning system.

b. The flood early warning system shall consist of weather, rainfall and stream data collection devices required to enable the National Weather Service to predict with reasonable accuracy what areas are likely to flood, at what levels, and the specific locations of overflow.

Emergency Management shall notify the emergency management organizations in the counties, which shall then notify the local police department or the municipal emergency management organization, as appropriate.

b. Once the determination is made to evacuate persons in the flood area, the Office of Emergency Management shall request that local news media broadcast the following message every quarter hour on the quarter hour:

"The Office of Emergency Management has been advised by the National Weather Service that the ... (body of water) is approaching critical flood stage and the properties adjacent to ... (streets, roads, avenues, other general addresses or vicinities) in the municipalities of ... are in danger of flooding at a level of ... feet. All persons located in those areas should take appropriate action to evacuate the area in an orderly fashion."